

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

STEPHEN H. SMALLWOOD, JR.,)	
)	
Petitioner,)	
)	
vs.)	Case No. CIV-05-1415-F
)	
JOSEPH SCIBANA,)	
)	
Respondent.)	

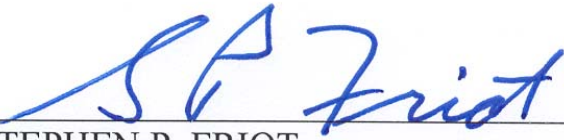
ORDER

Petitioner, a federal prisoner appearing *pro se*, has filed a Application to proceed *in forma pauperis* on appeal. (Doc. No. 46). Although 28 U.S.C. § 1915(b) does not apply to habeas actions, *see United States v. Simmonds*, 111 F.3d 737 (10th Cir. 1997) (holding Prison Litigation Reform Act inapplicable to habeas and §2255 actions and appeals) *overruled on other grounds* in U.S. v. Hurst, 322 F.3d 1256 (10th Cir. 2003), both §1915(a)(1) and (a)(3) do apply to a habeas appeal. Accordingly, a petitioner must show that the appeal is taken in good faith and that he lacks the financial ability to pay the required fees. *See, McIntosh v. United States Parole Comm'n*, 115 F.3d 809, 812 (10th Cir. 1997).

Having reviewed the motion and the record, the Court finds that Petitioner has presented a reasoned, non-frivolous argument on appeal and that the appeal is taken in good faith. Accordingly, the Court finds Petitioner is entitled to proceed without

payment of the filing fee, and his application for *in forma pauperis* status is **GRANTED**. 28 U.S.C. § 1915(a)(1) and (a)(3).

IT IS SO ORDERED this 15th day of August, 2006.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

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